

Customs (Prohibited Imports) Regulations 1995 No. 15

EXPLANATORY STATEMENT

STATUTORY RULES 1995 No. 15

Issued by the authority of the Minister for Small Business, Customs and Construction

Customs Act 1901

Customs (Prohibited Imports) Regulations

Section 50 of the Customs Act 1901 (the Act) provides in part that:

"(1) The Governor-General may, by regulation, prohibit the importation of goods into Australia.

(2) The power conferred by the last preceding subsection may be exercised -...(c) prohibiting the importation of goods unless specified conditions or restrictions are complied with.

(3) Without limiting the generality of paragraph (2)(c), the regulations -...(a) may provide that the importation of goods is prohibited unless a licence, permission, consent or approval to import the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and

The Customs (Prohibited Imports) Regulations (the Regulations) control the importation of goods specified in the various regulations or the Schedules to the Regulations, by prohibiting importation absolutely, or making the importation subject to the permission of a Minister or a specified person.

These regulations contain several amendments to the Regulations to:

- (i) permit the importation of firearms where required for use in the development of mountings for a laser target designator if the permission of the Minister for Justice has been granted;
 - (ii) prohibit the importation of parts for firearms for used in connection with the production of a film or for use in the development of a laser target designator unless the permission of the Minister for Justice has been granted;
 - (iii) exempt firearms imported by a person entering Australia under a New Zealand passport to participate in a lawful competition or hunting activities from safety testing requirements;
 - (iv) require the importer of a rifle, shotgun or combination long gun to produce to a Collector a licence or authorisation to possess the firearm in a State or Territory; and
 - (v) to allow the importation of antibiotics by members of sporting teams.
- (i) Importation of firearms for use in the development of mountings for a laser target designator

The regulations amend the Regulations to create a new exemption from the absolute prohibition on the importation of firearms. It is proposed to allow the importation of firearms for use the development of mountings for a laser target designator where the Minister for Justice has granted permission in writing. A laser target designator is a simulated firearm training system which is to be mounted onto a firearm. In order to develop an effective and practical mounting for a designator, the types of firearms onto which a designator will be mounted are required, some of which are not available in Australia.

Before granting a permission, the Minister for Justice must be satisfied that the firearm intended to be imported is not available in Australia and that, in the State or Territory where the firearm is to be used, the importer holds the relevant licence or authorisation to possess the firearm. The firearm must also be exported within 6 months of its importation, or such longer period specified in the permission.

(ii) Importation of parts for firearms for use in films and firearms for use in the development of mountings for a laser target designator

Under regulation 4D of the Regulations, the Minister for Justice may give written permission for the importation of a firearm to be used in connection with the production of a film. Under the new regulation 4DA of the Regulations, the Minister for Justice may also give written permission of the importation of a firearm for use in the development of mountings for a laser target designator.

It may be that firearms imported under regulation 4D or new regulation 4DA are, without the permission, firearms whose permission is absolutely forbidden. The importation of parts for firearms whose importation is absolutely prohibited is also prohibited. Where prohibited firearms are imported in accordance with a regulation 4D or new regulation 4DA permission, they are, by definition, exempt firearms and there is no control on the importation of parts for exempt firearms.

These regulations amend the Regulations to introduce a requirement that the written permission of the Minister for Justice must also be sought for the importation of parts for firearms imported under regulation 4D or new regulation 4DA. The permission in respect of parts is subject to specified conditions.

(iii) Exempt firearms imported for use in law competition by New Zealand passport holder

Under Item 4 of Schedule 3 of the Regulations, the importation of exempt firearms is subject to the condition that the firearms must satisfy the safety requirements set out in Part 2 of Schedule 3. One exception to this requirement is where an exempt firearm is imported by an importer who is entitled to remain in Australia under a visa or entry permit that is valid for not more than one year and who is the participant in a lawful competition or hunting activities.

This exemption has the unintended effect of excluding from its operation persons who enter Australia under a New Zealand passport as their relevant visa is not limited to a period of not more than one! year. These regulations amend * the Regulations to extend this exemption to persons who enter Australia under a New Zealand passport.

(iv) State or Territory licences or authorisations to possess rifles, shotguns and combination long-guns

These regulations amend the Regulations to require the importer of a rifle, shotgun or combination long-gun to produce to a Collector, at or before importation, evidence that the importer holds a relevant State or Territory licence or authorisation to possess the firearm. This introduces an additional requirement that must be satisfied before the firearm can be classified as an exempt firearm. Previously there was no requirement to produce this evidence in respect of these firearms and Customs was required to release these firearms, once the safety testing requirements are satisfied, whether or not the importer held the relevant State or Territory licence or authorisation.

(v) Importation of antibiotics by members of sporting teams

Under regulations 5 of the Regulations, the importation of a therapeutic substance that is an antibiotic substance is prohibited unless the permission of the Secretary of the Department of Human Services and Health or an authorised person. The exception to this prohibition is where antibiotics are for the personal use of a passenger, or relative of a passenger, on a ship or aircraft.

These regulations amend the Regulations to create another exception to the prohibition. The importation of antibiotics is not prohibited where the antibiotics are imported by a member of a group of person visiting Australia to participate in a national or international sporting event for used in the treatment of members of the group.

These regulations commence on gazettal.

These regulations are explained in greater detail in the Attachment.

Attachment

Regulation 1

Regulation 1 provides that the Customs (Prohibited Imports) Regulations are amended as set out in the Regulations.

Regulation 2

Regulation 2 amends the Interpretation regulation as follows:

- Subregulation 2.1 amends subparagraph (a)(i) of the definition of "exempt firearm" by omitting the reference to "Minister of State for Justice and Consumer Affairs" and substituting "Minister for Justice" in accordance with current Administrative Arrangements;
- Subregulations 2.2 and 2.3 effect minor grammatical amendments to paragraph (b) of the definition of "exempt firearm";
- Subregulation 2.4 amends paragraph (c) of the definition of "exempt firearm" by making the application of paragraph (c) subject to the new subregulation (1A);
- Subregulation 2.4 amends paragraph (d) of the definition of "exempt firearm" by inserting a cross reference to new subregulation 4DA(1). This means that those firearms in respect of which the importer produces to the Collector a written permission under new subregulation 4DA(1) for their importation are now, by definition, exempt firearms. New regulation 4DA is inserted by regulation 6; and
- Subregulation 2.5 inserts a new subregulation (1A) into the Regulations. New subregulation (1A) provides that paragraph (c) of the definition of "exempt firearm" only applies if the importer produces to the Collector, at or before importation, a statement in an approved form that the importer holds a licence or authorisation in accordance with the law of the relevant State or Territory to possess a firearm of that kind. The statement must be issued by the Commissioner of Police of that State or Territory or by the Commissioner of the Australian Federal Police in a Territory other than the Northern Territory. If the statement is not produced as required, the firearm to which paragraph (c) otherwise applies will not be an exempt firearm.

The requirement to produce the above statement is identical to the requirement with respect to handguns under paragraph (b) of the definition of "exempt firearm".

Regulation 3

Regulation 3 effects a minor grammatical correction to regulation 4A of the Regulations.

Regulation 4

Regulation 4 effects minor grammatical corrections to regulation 4C of the Regulations.

Regulation 5

Regulation 5 amends subregulation 4D(1) of the Regulations by omitting the reference to "Minister of State for Justice and Consumer Affairs" and substituting the correct reference to "Minister for Justice" in accordance with current Administrative Arrangements.

Regulation 6

Regulation 6 inserts new regulations 4DA and 4DB into the Regulations.

New regulation 42A provides that the Minister for Justice may give permission in writing for the importation of a firearm for use in the development of mountings for a laser target designator. A firearm in respect of which such permission is given will be an "exempt firearm" under paragraph 2(1)(d) of the Regulations. The Minister must not grant the permission unless he is satisfied that the firearm is of a kind that is not available in Australia and that the firearm is to be used in a State or Territory in which the importer holds a licence or authorisation to possess the firearm under the law of the State or Territory.

The permission itself is subject to conditions with which the importer must comply, including the requirement that the firearm be exported within 6 months of its importation (or longer period if specified). The regulation also allows the Minister for Justice to specify further conditions or requirements to which the permission is subject, for example requirements as to the storage of the firearm.

New regulation 4DB provides that a person may import a part for a firearm that has been imported, or is to be imported, under a permission granted under subregulation 4D(1) or 4DA(1) of the Regulations if the importer has obtained the written permission of the Minister for Justice for its importation. As a result of parts for such firearms being inserted in the second column of Part 1 of Schedule 3 to the Regulations (see subregulation 13.4, these parts are prohibited imports unless they are imported in accordance with a permission granted under subregulation 4DB(1).

A permission granted under regulation ADB is subject, to conditions with which the importer must comply, including the requirement that the part must not be used for a firearm other than a firearm specified in the permission. The regulation also allows the Minister for Justice to specify further conditions or requirements to which the permission is subject.

If there is any breach of any of the conditions to which a permission granted under both regulation 4DA or 4DB is subject, the importer may be liable for penalties for any breach and the firearm or the parts for a firearm will be seized as forfeited goods under section 229 of the Customs Act 1901.

Regulation 7

Regulation 7 effects minor amendments to subregulations 4R(1) and (2) by updating the references to the relevant Minister and Department for the purposes of regulation 4R in accordance with the current Administrative Arrangements.

Regulation 8

Regulation 8 effects a minor amendment to regulation 5 to update the reference to the relevant Department for the purposes of regulation 5, wherever occurring, in accordance with current Administrative Arrangements.

Regulation 9

Regulation 9 amends regulation 5A of the Regulations which governs the importation into Australia of a therapeutic substance that is an antibiotic substance.

Subregulation 9.1 omits subregulation 5A(1) and substitutes new subregulations 5A(1), (2) and (3). New subregulations 5A(1) and (2) are a re-formatting of the omitted subregulation 5A(1). New subregulation 5A(1) provides that the importation into Australia of an antibiotic substance is prohibited unless the written permission of the Secretary of the Department of Human Services and Health or an authorised person has been granted.

New subregulation 5A(2) provides that subregulation (1) does not apply to a substance that is for the personal use of a passenger or a relative of a passenger on a ship or aircraft that is brought to Australia on the same ship or aircraft where the amount does not exceed 3 months' supply at the maximum dosage recommended by the manufacturer.

New subregulation 5A(3) introduces a new exception to new subregulation 5A(1). The prohibition on the importation of an antibiotic substance does not apply where it is imported by a member of a group of persons visiting Australia to participate in a international or national sporting event and it is for use in treatment of members of the group.

Subregulation 8.2 effects minor amendments to subregulations 5A(4), (6) and (8) to update the reference to the relevant Department for the purposes of these subregulations, wherever occurring, in accordance with current Administrative Arrangements.

Regulations 10 and 11

Regulations 10 and 11 effect minor amendments to regulations SF and SH to update the reference to the relevant Department for the purposes of these regulations, wherever occurring, in accordance with current Administrative Arrangements.

Regulation 12

Subregulation 12.1 effects minor amendments to regulation SRA to update the reference to the relevant Department for the purposes of the regulation, wherever occurring, in accordance with current Administrative Arrangements.

Subregulation 12.2 amends subregulation 5HA(1) by omitting the reference to "Minister of Health" and substituting the correct reference to "Minister for Human Services and Health" in accordance with current Administrative Arrangements.

Regulation 13

Regulation 13 amends Part 1 of Schedule 3 of the Regulations. Subregulation 4(2) of the Regulations provides that the importation into Australia of the goods specified in the second column of Part 1 of Schedule 3 is prohibited unless the conditions, restrictions or requirements specified in the third column of that Schedule opposite the description of the goods are complied with.

Subregulations 13.1 and 13.2 amend the third column of Item 5 of Schedule 3. The second column of Item 5 specifies "exempt firearms" as goods whose importation is prohibited unless they satisfy the safety requirements referred to in the third column. The third column also sets out the exceptions to the safety testing requirement. One exception is where the exempt firearm is imported for use by a person who is entitled to remain in Australia under a visa or entry permit for period of not more than one year and is a participant in a lawful shooting competition or hunting activity (paragraph (c) of the third column). Persons who enter Australia under a New Zealand passport would not be covered by the exception as their entitlement to remain in Australia is not limited to one year.

Subregulation 13.1 omits and substitutes subparagraph (c)(i) in the third column to include in the scope of the exception persons entitled under a New Zealand passport to enter or remain in Australia. Subregulation 13.2 omits and substitutes subparagraph (c)(iii) to extend the requirement that exempt firearms referred to in the exception be exported not later than 1 year after their importation to those imported by a New Zealand passport holder.

Subregulation 13.3 amends paragraph (f) of the third column of Item 5 by omitting the reference to "4D(1)" and substituting "4D(1) or 4DA(1)". The effect of this amendment is to extend the exemption from the safety testing requirement to firearms imported for use in the development of mountings for a laser target designator (under new regulation 4DA).

Subregulation 13.4 inserts a new Item 5A into Part 1 of Schedule 3. The second column of new Item 5A specifies "Parts. of exempt firearms, being part of a kind referred to in subregulation 4DB(1)" as being goods whose importation will be prohibited unless the condition, restriction or requirement specified in the third column is complied with. These parts are parts for firearms for use in the production of a film and for use in the development of mountings for a laser target

designator. The requirement specified in the third column of new Item 5A is that the importer must produce to the Collector al., or before importation a permission granted under subregulation 4DB(1)(see regulation 6 above). Therefore, if permission for the importation of these parts is produced to the Collector, their importation will not be prohibited but will be subject to the conditions specified in regulation 4DB and the permission itself.